

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DARRYL LIVERMAN,)	
)	Civil Action
Petitioner)	No. 10-cv-5116
)	
vs.)	
)	
THE DISTRICT ATTORNEY OF BUCKS)	
COUNTY;)	
THE ATTORNEY GENERAL OF THE)	
COMMONWEALTH OF PENNSYLVANIA;)	
and)	
D. SAUERS,)	
)	
Respondents)	

O R D E R

NOW, this 6th day of July, 2011, upon consideration of the pro se Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody, which petition was filed November 14, 2010¹; upon consideration of the Supplemental Report and Recommendation of United States Magistrate Judge L. Felipe Restrepo filed May 27, 2011²; it appearing that as of the date of this Order, petitioner has not filed any objections to the

¹ Although the docket entries reflect that the petition for writ of habeas corpus was filed November 18, 2010, petitioner indicated below his signature that he executed the petition on November 14, 2010. (See petition at 16.) Pursuant to the prison mailbox rule, this court will consider the date of filing as November 14, 2010. The prison mailbox rule deems a motion to have been filed on the date the petitioner delivered his petition to prison officials to mail. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1997).

² Magistrate Judge Restrepo filed his original Report and Recommendation on January 19, 2011 (Document 12), recommending that the petition be dismissed for failure to exhaust state court remedies. By Order dated March 18, 2011 (Document 15), I remanded this case to Magistrate Judge Restrepo. By that Order, I instructed Magistrate Judge Restrepo to allow the parties to brief the issue of whether a "stay and abey" procedure is appropriate in this case pursuant to Rhines v. Weber, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005) and Crews v. Horn, 360 F.3d 146 (3d Cir. 2004), and to file the within Supplemental Report and Recommendation addressing this issue.

Supplemental Report and Recommendation of Magistrate Judge Restrepo; it further appearing after review of this matter that Magistrate Judge Restrepo's Supplemental Report and Recommendation correctly determined the legal and factual issues presented in the petition for habeas corpus relief,

IT IS ORDERED that Magistrate Judge Restrepo's Supplemental Report and Recommendation is approved and adopted.

IT IS FURTHER ORDERED that the pro se Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody is dismissed without an evidentiary hearing.

IT IS FURTHER ORDERED that because petitioner has not met statutory requirements to have his case heard, and no reasonable jurist could find this procedural ruling debatable, and because petitioner fails to demonstrate denial of a constitutional right, a certificate of appealability is denied.³

IT IS FURTHER ORDERED that the Clerk of Court shall mark this matter closed for statistical purposes.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge

³ See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542, 555 (2000).